

Bink's Coca-Cola Bottling Company and Service Employees International Union, Local Union No. 79, AFL-CIO. Case 30-CA-5349

August 5, 1981

DECISION AND ORDER

On November 12, 1980, Administrative Law Judge Marion C. Ladwig issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief in support of the Administrative Law Judge's Decision and a motion to strike portions of Respondent's brief in support of its exceptions.¹

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Bink's Coca-Cola Bottling Company, Escanaba and Iron Mountain, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

¹ The General Counsel urges the Board to strike certain portions of Respondent's brief which refer to certain settlement discussions between the parties allegedly held during and following the hearing in this matter. We have decided to strike those portions of Respondent's brief objected to by the General Counsel since the discussions referred to in the brief relate to matters which are not part of the formal record before the Board. See Sec. 102.45(b) and Sec. 102.46(c) of the Board's Rules and Regulations, as amended.

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we

have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT threaten to discharge any member of Service Employees International Union, Local Union No. 79, AFL-CIO's bargaining committee for opposing, or refusing to persuade other employees to accept, any wage or other contract proposal.

WE WILL NOT discharge or otherwise discriminate against any of you because of membership in or activity on behalf of Service Employees International Union, Local Union No. 79, AFL-CIO, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights mentioned above.

WE WILL make Debra Pirlot whole for any loss of pay or other benefits from the time we discharged her until the time we reinstated her to her former job (after which she voluntarily quit), with interest.

WE WILL immediately remove from our personnel records all references to our discharge of Debra Pirlot, and will not refer in any way to her discharge in any references we are asked to give for her.

BINK'S COCA-COLA BOTTLING COMPANY

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge: This case was heard by me at Escanaba, Michigan, on June 18, 1980. The charge was filed against Bink's Coca-Cola Bottling Company¹ (herein called the Respondent), by the Union on August 15, 1979,² and the complaint was issued on November 9.

Despite the opposition of union bargaining committee member Debra Pirlot and another committee member to the Company's last contract proposal, the union member-

¹ The name of the Respondent was amended at the hearing.

² All dates are in 1979 unless otherwise indicated.

ship accepted the proposal by a narrow margin. The primary issues are whether the Respondent: (a) unlawfully threatened, before the membership meeting, to discharge Pirlot and another committee member unless they attempted to "sell" the Company's proposal to the membership, and (b) discriminatorily discharged her after the meeting because of her continued opposition to the proposal, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Company, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Company, a Michigan corporation, is engaged in the bottling of soft drinks at its plants in Escanaba and Iron Mountain, Michigan, where it annually receives goods valued in excess of \$50,000 directly from outside the State of Michigan. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Company's Last Proposal*

At the fourth bargaining session on Tuesday, February 20 (in negotiations for a new agreement to replace their first collective-bargaining agreement, which expired on January 31), the Company made what it called its "final" offer, subject to the Union justifying its position. The next morning, February 21, the Union went on strike at both the Escanaba and Iron Mountain plants.

At the bargaining session on Wednesday evening, February 21, President Robert Bink made the Company's "final, final, final" offer, which provided for substantial increases in the higher classifications but little in the lower classifications. The Company explained the necessity for paying substantially higher wages to the upper-level employees in order to be competitive, and stated that it had a stack of applications 6 inches thick and could replace the employees in the lower classifications. Union bargaining committee member Pirlot attempted to justify higher wages in the lower classifications by arguing that the production laborers "could do every job wherever they were needed" and "I felt that was important," and that truck loaders, doing a lot of lifting, worked hard and also deserved more money. Committee member William Hartman argued that it was a shame that somebody had to work for 40 hours a week and still depend on welfare to feed his family. Committee member Tom Lark insisted that the route men should receive an extra penny per case.

When President Bink made his "final, final, final" offer, both he and attorney Barton Peck insisted that this was their absolute final offer. Peck stated that he was opposed to Bink making that generous an offer at that time, and that Bink was doing so only on the condition that

every member of the bargaining committee would "sell" the proposal to the union membership. He stated that, otherwise, the Company would propose an unspecified "less generous" offer, which could be submitted to the union membership without a committee recommendation and which, if voted down by the membership, the Company could replace with something in reserve to obtain an agreement; whereas the wages offered in the "final, final, final" offer could not be raised, and a negative membership vote would undercut the Company's bargaining position.

It was immediately clear, however, that three of the four employee members of the committee would not recommend the Company's last proposal to the membership. (The proposed wages in the lower classifications were below the "rock bottom" wages which the union membership had agreed earlier were necessary for the members to accept.) Committee member Pirlot was so upset at the wage rates offered for the lower classifications that she stated her opposition to the proposal even being taken to the union membership for a vote. Her response to Bink and Peck was that "the offer wasn't worthy to be presented to the membership." (Peck told her that she could not just look at her own vantage point—as a production laborer, complaining about the wage offer in the lower classifications—but "You have to look at the interest of everyone who you represent.") Committee members Hartman and Lark joined her in opposing the low wages for the lower classifications. Lark continued to insist, also, that the case-delivery rate must be increased, and he argued along with Pirlot that he did not think "the offer was worthy to try to sell" to the membership. The only committee member who favored the proposal was Michael Timbrook, who was in a higher classification which would get a raise of 55 cents an hour.

Finally, Business Representative Frank Andler caucused with the union bargaining committee. In the caucus, they did not discuss the Company's proposal that they "sell" the offer to the union membership; they discussed whether the offer should be presented to the membership in view of the vigorous opposition of committee members Pirlot, Hartman, and Lark to the offer. Finally, after expressing the viewpoint that this was the Company's last offer and that it must be submitted to the membership, Andler promised to seek more money for the lower classifications before telling the Company that the offer would be "presented" to the membership. Because of their opposition, Lark had left by that time, and neither Pirlot nor Hartman returned to the negotiating room.

After the caucus, Representative Andler gave the Company no indication that the committee members would "sell" the offer. When attorney Peck refused to raise the rates, Andler made a counteroffer, merely to take the offer to the union membership for a ratification vote. As Andler credibly testified, he told Peck and President Bink that "we weren't too happy with the increases on the lower classifications" but that "I would bring it before the membership [emphasis supplied] on Friday for ratification." (This testimony is corroborated in part by the Company's statement in its subsequent

letter dismissing Pirlot (G.C. Exh. 4), that the committee stated that the proposal would be "submitted" to the rank and file.) None of the committee members agreed to Peck's condition that each of them must "sell" the Company's last offer. Yet Peck neither withdrew the "final, final, final" offer nor mentioned further any lesser offer. (I discredit Bink's claim at the hearing that it was his "understanding" that "the wage package would be sold to the membership by the bargaining committee.")

Although the Company's last proposal was not conditioned on an end to the strike, Representative Andler told the Company "we would go back to work until we had our ratification vote." It was understood that the employees would continue to work under the terms of the expired 1977-79 agreement, even though the Company refused to extend that agreement unless the extension was in writing. Previously, Andler had orally proposed that the last agreement be extended on a day-to-day basis—thereby permitting a strike whenever the Union felt it necessary. (At one point in his testimony as a defense witness, Bink admitted—contrary to the Company's position—that he had discussed with Andler a "day-to-day" extension, but he thereafter made a retraction, which I discredit. Bink initially agreed to the day-to-day extension, stating "that would be fine" (as Andler, who impressed me as being an honest witness, credibly testified). However, on February 5, the Company sought a change in this verbal agreement by proposing that Andler sign a written extension of "the labor contract which expired on January 31 . . . until we have terminated our negotiations either by agreement to a new contract or through an impasse in negotiations"—thereby restricting the right to strike. (G.C. Exh. 2.) Andler refused to sign such a written extension. Thereafter on February 11, the Company sent Andler a letter over Bink's signature, stating "it is the position of the Company, that the extension of the contract has not been agreed to by the union. . . . *I will not accept a verbal extension of the contract. Extension of the contract is all too important to be done verbally.*" (G.C. Exh. 3) (Emphasis supplied.) I reject the Company's contention that there was a verbal extension of the expired agreement on February 21. (Andler could not recall that subject even being raised at the February 21 negotiations. According to the Company's February 23 dismissal letter (G.C. Exh. 4), it was agreed at this meeting that the employees would return "under the same terms which existed prior to the Wednesday walkout.")

After the meeting, Representative Andler reported to committee members Pirlot and Hartman, who were waiting in the hall, that he had agreed to "take it to the membership meeting," which was set up for Friday evening, and "told us that we should return to work," as credibly testified by Pirlot (who appeared to be a conscientious witness with a good recollection of the events). "We were never told by Mr. Andler to sell the contract." Nothing had been said, either in the February 21 meeting or by Andler after the meeting, about keeping the Company's offer a secret from the bargaining unit employees until the ratification meeting.

B. Threat and Discharge

On Thursday morning, February 22, committee member Pirlot arrived at the Escanaba plant early to inform the striking employees to return to work. Upon being questioned about the Wednesday negotiations, she reported what the Company had offered. When the strikers objected to returning to work for wages below the "rock bottom" on which they had decided, Pirlot insisted that they return to work, informing them that Andler "had made the decision that it would be presented for a vote and . . . that we would continue working" until then. They reported to work.

About an hour later, committee member Hartman approached Pirlot and suggested that they resume the strike before a syrup truck arrived, in order to prevent a long strike. Pirlot said she did not think it would be legal because Andler "had committed us," and suggested that he would have to talk with Andler. At that point, Hartman left the plant and telephoned Andler. He later reported back that Andler said as long as the majority of the employees wanted to continue the strike, they could. All of the employees present then returned to the picket line. As Pirlot credibly testified, "it was a mutual agreement by everybody that they wanted to go out on strike," and she neither suggested nor encouraged them to strike again.

About an hour or so later, President Bink and attorney Peck arrived at the plant and telephoned Andler, who informed them that he had told the employees they could strike if a majority wanted to. After Peck told Andler that the strike was illegal, that the leaders of the strike were subject to discharge, and that he was going to file charges and sue Andler or the Union, Andler had Pirlot and Hartman called to the office telephones. When Peck left the line, Andler told Pirlot and Hartman to go back to work. The two committee members (on separate telephones) asked, "What do you mean we have to go back to work? You just gave us permission to go back on strike." Andler stated that he was going to make some telephone calls (to check on the legality), but meanwhile they were to go back to work. Pirlot and Hartman then induced the employees to return to work, after having been on strike about 1-1/2 hours that morning.

At 3:30 p.m., Thursday, February 22, President Bink and attorney Peck met with Representative Andler and committee members Pirlot, Hartman, and Timbrook. Peck stated that they had no right to be out on strike after agreeing to "sell" the Company's wage proposal to the membership. Andler positively denied ever saying that they would "sell" the offer, stating that he had said the offer would be "presented" to the membership. Bink showed them a piece of paper with three wage scales on it and said that he had gone from the first to the third wage offer, just "to get it over with." After insisting that the strike that morning was illegal, Peck told Pirlot (as she credibly testified) "that I was endangering other employees' jobs by taking the position that I was." He asked about her husband being employed by Harnischfeger and said that she "shouldn't even be in on the negotiations sessions because I wasn't dependent on my job

at Coca-Cola" and "I wasn't really interested enough in the outcome." Peck added that the Harnischfeger employees were "union instigators" and rabble-rousers. Then, after stating that Hartman already had another job lined up, Peck told Pirlot and Hartman that "as of right then that we *were fired*" (emphasis supplied), stating that they had led an illegal strike that morning and had not lived up to their responsibilities as bargaining committee members to "sell" the Company's proposal, prejudicing the Company's bargaining position. As Pirlot appeared to recall vividly, "Mr. Bink took the floor then and said that we *weren't fired then but if we didn't try to sell the proposal at the membership meeting that then we would be* [emphasis supplied] *fired.*" (Hartman recalled, Bink interjecting that they *would be* discharged if the contract was not accepted that evening.) Thereafter in the meeting, and in the Pirlot's dismissal letter, which he prepared with Bink the next day, Peck referred to this as an offer to "reinstate" Pirlot and Hartman if they sold the Company's proposal. Peck stated that the Company's proposal should not be discussed by one or two members of the bargaining committee, and that it was important that it be discussed only at the ratification meeting and that the Company's position be given to justify the proposal. He stated that the only way that the damage already done could be eliminated would be for the committee to "sell" the Company's offer. Although both Pirlot and Hartman continued to express their opposition, Andler stated that the ratification meeting had been moved up to that Thursday evening and that he would recommend the offer.

At the ratification meeting on Thursday evening, February 22, the Company's proposal was accepted by a vote of 11 for and 9 against, upon the recommendation of Representative Andler and committee member Timbrook, and over the opposition of committee members Pirlot and Hartman. (The 2-year agreement expires in January 1981.) Following the meeting, Timbrook returned President Bink's telephone call. Bink thanked him for his support in getting the contract passed and company attorney Peck, on an extension phone, "asked me if Debbie [Pirlot] and Mr. Hartman had tried to get the contract passed. And I told them, no, they hadn't." (Soon after the vote, Hartman quit for a better job. His termination is not in issue.)

When committee member Pirlot returned to work on Tuesday, February 27 (after being on sick leave 2 days), her timecard was not in the slot. Foreman Dick Parkerson told her that President Bink had fired her, that he had tried on Friday to get Bink to change his mind, but it had not done any good. When she went to Bink's office, he said he felt bad about dismissing her; that "as far as he was concerned he would have been willing to forget the whole thing because . . . the proposal was accepted; but he was following his legal advice and letting me go." He said "that I could use him for a recommendation and that he wouldn't say anything about what had happened" and "would give me a good work recommendation." He handed her a 1-1/2-page dismissal letter, dated February 23 (G.C. Exh. 4). It stated that this would confirm her discharge "resulting from your abuse of responsibility as a union bargaining representative as well

as your misconduct as an employee of our company"; cited Bink's final proposal on Wednesday, February 21, conditioned on an understanding that each committee member would "sell" it; asserted that the committee after a caucus stated that the proposal was by and large generous and it would be "submitted"; stated that it was agreed that the employees would return Thursday morning "under the same terms" as before the walkout; referred to violation of the understanding and the "extended" labor contract, and to her and the pickets refusing entrance by a supply truck; and stated that she and Hartman were terminated at the Thursday afternoon meeting for prejudicing the Company's bargaining position in violation of the understanding, the National Labor Relations Act, and the extended contract, but that Peck inform them they would be "reinstated" if they lived up to the agreement requiring that they "sell" the Company's proposal to the employees. The letter concluded:

We have been informed by representatives of your committee that *you appeared at the ratification meeting . . . and urged rejection of the company proposal.* Moreover we were informed that *you told the members that the company had threatened to discharge you for speaking out against its proposal.*

You, as a bargaining committee member, have violated a position of responsibility and trust which cannot be tolerated. Successful negotiations can only be attained in an atmosphere of trust. An agreement must be respected especially by the leadership of the respective parties. *We cannot condone your behavior which you were forewarned would lead to your dismissal.*

Be advised that your dismissal is *effective as of this date.* [Emphasis supplied.]

(Pirlot was reinstated without backpay on June 11, pursuant to a challenged arbitration award on which neither the General Counsel nor the Company relies. She quit on August 11.)

C. The Company's Defenses

By the time the Company filed its answer on November 23, it took the position that it had discharged committee member Pirlot on Thursday, February 22, for "participation and leadership in instigating" the strike that morning in violation of the no-strike mandate in the extended labor agreement, as further agreed by the bargaining committees on Wednesday, and for advising the employees of the substance of the Company's offer and successfully encouraging them to strike Thursday morning despite the Wednesday agreement that each committee member would attempt to "sell" the package. Thus the answer asserted that she was discharged on February 22—not on February 23 as stated in her dismissal letter nor on February 27, the date she was advised of her discharge. However, when endeavoring to support this theory at the hearing, President Bink gave much conflicting testimony.

When first called as an adverse witness, Bink claimed that "Yes, I did" fire Pirlot, and that he did so at the

Thursday afternoon meeting, February 22. When asked whether that was a final discharge or "conditioned on anything," he positively answered, "That was a final discharge." Then he testified yes, "That's correct," that Pirlot would be reinstated if she "Was to live up to her commitment." He testified, "That's correct," one of the reasons he "relied on in deciding to discharge Ms. Pirlot was [his] belief that she led the strike that occurred the day [he] discharged her." He answered, no, when asked if he talked to Pirlot and Hartman before *he* discharged them, and before *he* made the decision to discharge them. He gave a single reason for the discharge, testifying "The discharge was for leading the strike." He further testified "That's correct," *he* "orally notified Debra Pirlot of her discharge on the afternoon of February 22," and *he* told her how she could be reinstated. Thus, contrary to the credited testimony that it was attorney Peck who told Pirlot and Hartman at that meeting that "as of right then that we were fired" and that "Mr. Bink took the floor then and said that we weren't fired then but if we didn't try to sell the proposal at the membership meeting that then we would be fired" (as quoted above), up to this point in Bink's testimony he positively testified that he himself made the decision and discharged the two committee members at the Thursday meeting. He also unequivocally claimed that the reason for the discharge was for leading the strike.

Next, Bink changed his testimony and claimed that it was attorney Peck who informed Pirlot of her discharge "after counseling with me," and who "advised her of the condition upon which her discharge may be retracted." He still testified, though, that he himself made the final decision to discharge Pirlot. When asked if he told Peck *before* the meeting to discharge Pirlot, he first positively answered, "Yes," but thereafter claimed that he did not know if this was before the meeting started or during a caucus. He then testified that his best recollection was that Peck suggested before the meeting that they should discharge the two committee members, "And I said, if you find that to be necessary that's fine. I'll back you on that." He testified:

Q. So, you didn't make the final decision then?

A. I made the final decision to support Mr. Peck's expertise, yes.

Q. But you left it up to him to make the final decision as to terminate or if he should fire?

A. Yes.

When recalled as a defense witness, Bink had a different version. In answer to a leading question, he testified, "Yes" he knew before the Thursday afternoon meeting what Attorney Peck was going to say at the meeting." He answered "Yes," he had discussed action to be taken against Pirlot and Hartman, and then added, "You [Attorney Peck] indicated that they had led the strike and that because they led the strike they would have to be terminated." He later denied recalling that he told Pirlot to disregard what Peck said, and denied remembering that he told her she would be fired unless she lived up to the commitment to sell the Company's proposal." I discredit these various versions given by Bink of what hap-

pened, and I find that he was attempting to conceal the fact that he did not decide to discharge Pirlot until Friday, February 23 (the day after the ratification vote).

Concerning the Company's contention, stated in its February 23 dismissal letter, that Pirlot and the pickets "refused entrance onto company property of a semi-truck driven to our plant by a Chicago supplier," President Bink admitted on the stand that this "had nothing to do" with her discharge. (The credible evidence establishes that such an incident never occurred.) When Bink was questioned further about this, his counsel objected, stating that the dismissal letter "was a joint effort" between the two of them and implying that the counsel "felt it should be included."

In its defense, the Company relied primarily on its cross-examination of the General Counsel's witnesses.

D. Concluding Findings

The Company adopted bargaining tactics which would have required all of the employee members on the union bargaining committee to "sell" the Company's proposal to the union membership, regardless of their personal views on the merits of the proposal.

The Company had devised three wage proposals to present as the negotiations progressed, and made the first proposal on February 20, calling it the "final" offer, subject to the Union justifying its position. When the Union responded with a strike on February 21, Company President Bink (contrary to the advice of counsel) skipped the second (presumably his "final, final") wage offer and proposed the third offer which he called the "final, final, final" offer. The Company said this absolutely last offer was made on the condition that every member of the bargaining committee must agree to "sell" it to the union membership, otherwise the Company would withdraw the triple-final offer and propose an unspecified "lesser" (presumably the second, double-final) wage offer.

It was immediately obvious that three of the four employees on the bargaining committee would not agree to "sell" the triple-final wage offer. The proposal provided substantial wage increases in the higher classifications (including a 55-cent raise for the fourth committee member, Timbrook), but little for the lower classifications. The Company justified its giving most of the increases to its key, skilled, and senior employees (to retain these employees who would be hard to replace). But the wage offer for the lower classifications was below the "rock bottom" wages, which the union membership had already decided would be required.

Union committee member Pirlot was most insistent that the triple-final wage offer was not worthy of being sold to the membership, and not even worthy of being taken to the membership for a vote. She argued that the production laborers were important to the operation of the plant because they could do every job wherever they were needed, and that the truck loaders were also deserving of more money because of the hard work they performed. The Company stated that she could not consider only her own personal interests as a production laborer, and pointed out that it had a stack of applications 6 inches thick and could replace the employees in the

lower classifications. Committee members Hartman and Lark also vigorously opposed the wage offer.

However, after having revealed to the Union what the Company was willing to offer to settle the strike in progress, the Company was not in a position to withdraw its ultimate, triple-final wage offer and to substitute its second, double-final offer for the Union to take without recommendation to the membership. The union bargaining committee would have had the right, if not the obligation, to inform the striking members of the existence and size of the Company's triple-final wage offer, as well as the Company's tactics of requiring every member of the bargaining committee to "sell" the offer which three of the four committee members opposed as being unfair to the lower paid plant employees.

It was under these circumstances that when Union Representative Andler and committee member Timbrook returned from a caucus—without the three committee members who had vigorously opposed the triple-final wage offer—and made a counteroffer that it merely would take the triple-final offer to the membership for a vote, the Company acquiesced and said nothing further about a lesser offer. Although the Company realized that three of the four committee members would not "sell" the wage offer, it also realized that its own premature revealing of its best offer had undercut its bargaining position for settling the strike. It was unrealistic at that time for it to offer anything less.

Andler also informed the Company that the striking employees would return to work until the ratification vote. As found, there was no extension of the expired 1977-79 agreement, which had contained a no-strike clause. The employees returned to work Thursday morning.

The next meeting was held on Thursday afternoon, February 22, following the 1-1/2-hour strike during the morning. Peck told Andler and the committee that they had no right to be out on strike after agreeing to "sell" the Company's wage proposal to the membership. Andler positively denied ever saying that they would "sell" the offer and stated that he had said only that the offer would be "presented" to the membership for a vote. After much argument, Peck told Pirlot that she was *endangering other employees' jobs* by taking the position she was taking (opposing the Company's offer because of her own interests as a lower-classification production laborer); told her that because of her husband's employment at Harnischfeger, she was not dependent on her job and therefore *should not even be in the negotiations* (because others were dependent on their jobs and could not afford to strike); and added that the Harnischfeger employees were *union instigators and rabble-rousers*. Then, after stating that Hartman already had another job lined up, Peck told Pirlot and Hartman they were *fired* for leading an illegal strike that morning and not living up to their responsibility as bargaining committee members to "sell" the Company's proposal, prejudicing the Company's bargaining position. At that point, Bink spoke up and said they were not fired then, *but if they did not try to sell the Company's proposal at the membership meeting, they would be fired*.

The Company's proposal was accepted that Thursday evening by the narrow margin of 11 to 9, over the opposition of Pirlot and Hartman. (Hartman thereafter quit for a better job.) On Tuesday, February 27, when Pirlot next reported to work, President Bink told her that as far as he was concerned, he would have been willing to forget the whole thing because the proposal was accepted, but he was following his legal advice and discharging her. He gave her a dismissal letter, prepared by himself and counsel. It was dated February 23 and it made clear that the Company decided to discharge her (as Bink had threatened on Thursday afternoon, the day before), after learning that she appeared at the ratification meeting, urged rejection of the company proposal, and told the union members (truthfully) that the Company had threatened to discharge her for speaking out against its proposal. After stating that the violation of her "position of responsibility and trust" as a bargaining committee member "cannot be tolerated," the letter concluded:

We cannot condone *your behavior which you were forewarned would lead to your dismissal*.

Be advised that your dismissal is *effective as of this date* [February 23]. [Emphasis supplied.]

Her only "behavior" about which she was "forewarned" (on Thursday afternoon when threatened with discharge if she did not try to "sell" the proposal at the membership meeting that evening) was her opposing—instead of "selling"—the Company's proposal at the ratification meeting by urging its rejection and by reporting Bink's threat of discharge.

E. Contentions of the Parties

The General Counsel contends in his brief that there was no agreement to "sell" the Company's proposal; that the Union made a counteroffer merely to present the proposal to the membership, not to "sell" it; and that the Company, knowing that it could not expect committee members Pirlot, Hartman, and Lark to "sell" the proposal, decided that its only chance to settle the strike and contract was "to just rely on the Union's presentation of the proposal to the membership." Asserting that the Company admittedly refused to continue Pirlot's employment because she urged rejection of its proposal, as she had a Section 7 right to do, and because she truthfully told union members that the Company threatened to discharge her for speaking out against the proposal, the General Counsel contends that the Company discriminatorily discharged her for her actions as a union leader in violation of Section 8(a)(3) and (1). The General Counsel also contends that there is independent evidence of animus against the union bargaining committee member, Pirlot, because of attorney Peck's reference to her husband as a rabble-rouser and union instigator at the Harnischfeger plant, when telling her and Hartman at the Thursday afternoon meeting that they were discharged—whereupon Bink told Pirlot and Hartman they would not be discharged if they sold the proposal to the membership; that the Company did not have a good-faith belief that Pirlot instigated or led the Thursday morning strike;

and that the strike was not illegal because the expired 1977-79 agreement (containing the no-strike clause) was not extended, and there was no agreement or condition for the employees to return to work that morning, just Representative Andler's gratuitous offer to return. The General Counsel therefore contends that the Company discriminatorily discharged Pirlot because, as a member of the bargaining committee, she chose to disagree with the Company's positions in bargaining and because her husband was perceived by the Company's attorney as being a union instigator and a rabble-rouser. The General Counsel further contends that Bink's conditioning Pirlot's continued employment on her selling the Company's proposal to the union membership clearly violated Section 8(a)(1) of the Act.

The Company contends in its brief, contrary to the credited testimony, that following the union caucus during the February 21 meeting, Andler "reported" to Bink and Peck that the union bargaining committee "had agreed to *accept* the Company's most generous offer" (emphasis supplied), including the condition that each member of the committee had an "obligation to sell" the Company's proposal at the upcoming ratification meeting. Then, in defense to the part of the complaint which alleged a discriminatory discharge on February 27 for engaging in the Thursday, February 22 strike, the Company contends that Pirlot was discharged on Thursday because of her conduct that morning. It argues that the discharge was justified because on that Thursday morning, Pirlot prematurely informed employees of the Company's best offer, urged its rejection, and encouraged and led the 1-1/2-hour strike which was in violation of Andler's agreement to continue working until the ratification vote. (The Company has apparently dropped its contention that the expired 1977-79 agreement was verbally extended and that the strike violated the no-strike clause.) Relying on its position that there was an "obligation to sell" the Company's proposal, the Company contends that Pirlot's conduct that morning was in "defiance" of that obligation. The Company completely ignores the part of the complaint which alleges that the Company discharged Pirlot on February 27 to discourage employees from engaging in other concerted activities, and the credited testimony that Bink told Pirlot on Thursday afternoon—after Peck said she was fired for her conduct Thursday morning—that she was *not* fired then, but that she *would* be if she did not sell the company proposal to the union membership. It also ignores the concluding statement in its own February 23 letter dismissing Pirlot, concerning her being "forewarned" (on Thursday afternoon) that her "behavior . . . would lead to [her] dismissal," following the statement in the letter that she "appeared at the ratification meeting" Thursday evening "and urged rejection of the company proposal" and "told members that the company had threatened to discharge [her] for speaking out against its proposal." The brief further ignores the credited testimony that when Bink informed Pirlot on February 27 of her discharge, he told her that "as far as he was concerned he would have been willing to forget the whole thing because . . . the proposal was accepted, but he was following his legal advice and letting her go" (thereby indicat-

ing the relevance of Peck's statements to her upon his telling her Thursday afternoon that she was fired).

F. Analysis and Conclusions

President Bink undercut the Company's own bargaining position when he, contrary to advice of counsel, passed over its second planned wage offer and proposed its third and last wage offer on the condition that every member of the bargaining committee must agree to "sell" the offer to the union membership, or the Company would propose a lesser offer to be taken to the membership without a recommendation by the committee. The February 21 strike was already in progress, and when three of the four union bargaining committee members opposed the offer, it was too late to have any hopes of settling the strike with a lesser offer. The Company having revealed what it would be willing to give in wage increases to settle the strike was unrealistic to expect the Union to accept anything less.

It was under these circumstances that the Company acquiesced when the Union made a counteroffer on February 21 merely to take the Company's wage offer to the membership for a vote—without promising to recommend or "sell" it. (In the absence of an agreement that each committee member must "sell" the Company's proposal, there is no issue whether objecting committee members, such as Pirlot and Hartman could be lawfully discharged or threatened with discharge for refusing to abide by a union commitment that they "sell" the offer.)

On Thursday afternoon, February 22, the Company adopted the bargaining tactics of threatening to discharge Pirlot and Hartman unless they assumed a nonexistent obligation to "sell" the Company's wage offer to the union membership at the Thursday evening ratification meeting. I find it clear that the Company thereby coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, violating Section 8(a)(1) of the Act as alleged in the complaint.

In addition, President Bink carried out the threat and discharged Pirlot on February 27, giving her a dismissal letter, which pointed out that she was being discharged for "behavior which you were forewarned would lead to your dismissal," after stating that she had "violated a position of responsibility and trust," having appeared at the Thursday evening ratification meeting, "urged rejection of the company proposal," and "told the members that the company had threatened to discharge [her] for speaking out against its proposal." I therefore find that the Company discharged her on February 27 because, as a member of the bargaining committee, she continued to oppose the Company's wage proposal. Accordingly, I find that the Company discriminatorily discharged Pirlot on February 27 "in order to discourage employees from engaging in . . . other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . thereby discouraging membership in a labor organization," in violation of Section 8(a)(3) and (1) of the Act, as alleged in the complaint.

I also agree with the General Counsel that there is independent evidence showing company animus against Pirlot as a member of the union bargaining committee.

Bink revealed to Pirlot at the time of her discharge that he was willing to forget the whole thing because of the acceptance of the Company's wage proposal, but that he was following the advice of counsel (Peck), and discharging her. I find that part of Peck's motivation in prevailing upon Bink to discharge Pirlot is revealed by his statements to her upon discharging her Thursday afternoon (immediately before Bink countermanded the discharge, but warned that she would be discharged unless she sold the Company's offer). Peck told her that she was endangering other employees' jobs (by opposing the Company's offer because of her own interests as a production laborer), that she should not even be in the negotiations (because, with a husband working at Harnischfeger, she was not dependent on her job—unlike others who were dependent on their jobs and could not afford a strike), and that the Harnischfeger employees were union instigators and rabble-rousers. I therefore find that the Company's desire to eliminate Pirlot from the union bargaining committee was a motivating factor in the decision to discharge her.

The Company contends in its brief that it was justified in discharging Pirlot because of her conduct on Thursday morning, February 22, when the 1-1/2-hour strike occurred. However, in view of Bink's countermanding of Peck's discharge of Pirlot at the Thursday afternoon meeting when Peck stated that she was discharged for her conduct that morning, the Company is unable to demonstrate that she would have been discharged in the absence of her subsequent protected conduct. (At the time of the meeting that afternoon, Peck assumed that Pirlot was one of the leaders of the strike because she reported to some of the employees the Company's latest wage offer, because Peck was present when Pirlot and Hartman asked Representative Andler over the telephone, "What do you mean we have to go back to work? You just gave us permission to go back on strike," because Pirlot was participating in the picketing when Peck and Bink arrived at the plant that morning, and because Pirlot had vigorously opposed the Company's wage offer. In fact, she did not suggest, encourage, or lead the strike.) I therefore find it unnecessary to rule on whether the General Counsel is correct in contending that the strike was protected concerted activity (because there was no agreement or condition for the employees to return to work until the ratification vote, just Andler's gratuitous offer to return—inaccurately referred to as an agreement) or whether the Company is correct in contending that the strike was unprotected activity, for which Pirlot could be discharged as a participant or leader.

CONCLUSIONS OF LAW

1. By discriminatorily discharging Debra Pirlot as a member of the union bargaining committee because of her continued opposition to the Company's wage proposal and in order to eliminate her from the committee, the Company engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.

2. By threatening to discharge Pirlot and bargaining committee member William Hartman unless they at-

tempted to persuade other employees to ratify the Company's proposal, the Company violated Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged an employee, I find it necessary to order it to compensate her for lost pay and other benefits, computed on a quarterly basis from date of discharge to date of reinstatement, less net interim earnings, in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER³

The Respondent, Bink's Coca-Cola Bottling Company, Escanaba, and Iron Mountain, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to discharge any member of the union bargaining committee for opposing, or refusing to persuade other employees to accept, any wage or other contract proposal.

(b) Discharging or otherwise discriminating against any employee because of membership in or activity on behalf of Service Employees International Union, Local Union No. 79, AFL-CIO, or any other union.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make Debra Pirlot whole for any loss of pay or other benefits she may have suffered by reason of the discrimination against her in the manner set forth in the Remedy section.

(b) Expunge from the personnel records any reference to the discriminatory discharge of Debra Pirlot.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its plants in Escanaba and Iron Mountain, Michigan, copies of the attached notice marked "Appen-

³ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

dix."⁴ copies of the notice, on forms provided by the Regional Director for Region 30, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places

⁴ In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.